

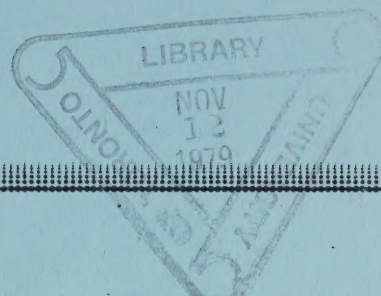
3
4
17
LOCAL GOVERNMENT

Ontario
811
BULLETIN 31

CA24N

IA 11

-79B31



THE STATUTORY POWERS PROCEDURE ACT, 1971

2
Ontario Ministry of Intergovernmental Affairs

Hon. Thomas L. Wells
Minister

D.W. Stevenson
Deputy Minister

Local Government Division
Municipal Administration Branch


August 1979

To the Municipal Clerk:

Please circulate this bulletin or make copies for distribution to councillors or staff of your municipality who may be interested in the subject. Additional copies are available at fifty cents each from the Publications Centre (see page 9).

TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION.....	1
PURPOSE OF THE STATUTORY POWERS PROCEDURE ACT, 1971.....	2
MINIMUM RULES FOR PROCEEDINGS.....	4
SUMMARY.....	8



Digitized by the Internet Archive
in 2024 with funding from
University of Toronto

<https://archive.org/details/3176118943620>

INTRODUCTION

The councils of Ontario municipalities are continually called upon to exercise powers given to them under the statutes. When exercising certain of these powers, they may be subject to the provisions of The Statutory Powers Procedure Act, 1971. The members of council and senior staff of municipalities may not be aware of these provisions with the consequence that they may find one of their decisions overturned by the courts. This can result in additional expenses for the municipality.

This bulletin will review this legislation briefly and discuss its impact on councils and staff of municipalities.

The information contained here is intended to be read in conjunction with The Statutory Powers Procedure Act, 1971. Copies of an office consolidation of this Act are available at \$1.75 a copy from:

Ontario Publications Centre
880 Bay Street
5th Floor
Toronto, Ontario
M7A 1N8

PURPOSE OF THE STATUTORY POWERS PROCEDURE ACT, 1971

The Statutory Powers Procedure Act, 1971, was enacted to provide a minimum set of procedural rules for tribunals - councils are considered tribunals for the purposes of this statute - when they exercise statutory powers of decision as defined in section 1(1) para.(d) of the Act.

Municipal councils obtain all of their powers from Provincial statutes and when exercising a power that qualifies as a "statutory power of decision", they are subject to the provisions of the Act.

"Statutory power of decision" is defined in the Act as:

"...a power or right, conferred by or under a statute, to make a decision deciding or prescribing,

(i) the legal rights, powers, privileges, immunities, duties or liabilities of any person or party, or

(ii) the eligibility of any person or party to receive, or to the continuation of, a benefit or licence, whether he is legally entitled thereto or not;...."

Many activities of a municipal council clearly fall within this meaning; others are not so clear.

As to the situations wherein the Act applies, section 3(1) of the Act states:

"Subject to subsection 2, this Part applies to proceedings by a tribunal in the exercise of a statutory power of decision conferred by or under an Act of the Legislature, where the tribunal is required by or under such Act or otherwise by law to hold or to afford to the parties to the proceedings an opportunity for a hearing before making a decision."

An example of this would be the situation where council is required under section 238 of The Municipal Act to hold a hearing before it can dismiss certain officers of the corporation.

On the surface this section may appear simply to require council to hold a hearing where the legislation that gives them the authority to make a decision requires a hearing.

There are, however, circumstances involving the rights of individuals where the courts may hold that a hearing is required to protect these individual rights even though a hearing is not a requirement of the enabling legislation.

This condition, commonly referred to as the procedural rules of natural justice, generally requires that the parties be afforded a hearing after proper notice, with certain rights to call witnesses and to cross-examine.

How can a council decide whether a hearing would be required under the rules of natural justice? Many volumes have been written on this subject and still there is not an unarguable set of conditions.

One example might be the situation where a council feels it necessary to revoke a licence or other privilege already possessed by an individual - say, a cab licence. This situation usually requires that the individual be afforded an opportunity for a hearing even though the legislation enabling council to licence the cab owner does not require a hearing.

Where council is in doubt as to whether or not a hearing should take place or whether to appoint a committee to hold the hearing as provided for in section 242 (b) of The Municipal Act, the advice of a solicitor should be obtained. This may avoid the delay and expense involved if council's decision is overturned by the courts.

MINIMUM RULES FOR PROCEEDINGS

After it is decided that a hearing is required either,

- a) under the legislation enabling council to make the decision,

or

- b) under the procedural rules of natural justice,

the minimum rules for the proceedings are set out in sections 4 through 25.

These rules are designed to standardize the proceedings where hearings are required, avoid confusion and ensure the protection of the individual's rights.

The following are highlights of sections 4 through 25.

Notice

Reasonable notice should be given to all parties. In some instances the type of notice is clearly set out in the enabling legislation and must be followed carefully. Where specific instructions detailing the type of notice are not set out, care should be given in considering the individual situation in determining what constitutes "reasonable" notice. Likely any notice should be in writing, as opposed to oral. Consideration should also be given to the need to place additional notices in a local newspaper.

The notice must establish the time, place, purpose and statutory authority for the hearing. A statement must also be included to the effect that the council may proceed in the absence of the party notified and that he will not be entitled to any further notice in the proceedings.

Hearings to be Public

All hearings held by council under the provisions of The Statutory Powers Procedure Act, 1971 shall be open to the public except where council feels that matters of public security may be

revealed or intimate financial or personal information may be disclosed, in which case the hearing may be held *in camera*.

The following statement appeared in the Manual of Practice on Administrative Law and Procedure in Ontario published by the Ministry of the Attorney General -

"The principle upon which courts are required to hold trials in public is that it is in the interest of the public that proceedings in the courts should be open to scrutiny to ensure justice is done and may be seen to be done. The requirement is intended as a protection of this public interest and not of the interest of the parties to the proceedings. The principle is departed from by the courts only where the adverse effects upon the parties or the public are considered to be so serious that they outweigh it."

Witnesses, Summonses, Maintaining Order

Sections 9 through 15 prescribe the procedures to be followed by council dealing with the calling of witnesses, issuing summonses and the maintaining of order during the proceedings.

This power is not one often exercised in the normal course of council business. In exercising it, council would no doubt benefit by consulting a solicitor.

Notice of Decision

After a hearing, council must give the parties a notice of its decision and, if requested by a party, shall also give written reasons for the decision. Such reasons should be included and identified as such in the written resolution passed by council to effect the decision.

The council should mail the decision and reasons, if given, by first-class mail to the parties. Receipt of the decision shall be deemed to have occurred on the fifth day after mailing. There are certain exceptions regarding receipt set out in section 18 of the Act. This allowance for receipt of the notice is important in calculating the time period within which an appeal may be lodged.

Record of Proceedings

Council, probably through the clerk, shall compile a record of the proceedings. The record is to include,

1. any applications, complaints or documents by which the proceedings were commenced;
2. notice of any hearing;
3. intermediate orders;
4. Documentary evidence (with some limitations);
5. a transcript, if any, of the oral evidence;
6. decision and, if given, reasons.

This record is very important as it will likely be required if the decision of council is appealed.

Hearings are generally conducted as part of a regular council meeting and the decision takes the form of a written resolution. Where the nature of the hearing is complex some councils will prefer to call a special meeting for the purpose.

The minutes of the council meeting would likely not be considered as a transcript of oral evidence as they are not usually taken verbatim. In fact, The Municipal Act, section 215, states that the clerk shall record without note or comment all resolutions, decisions and other proceedings. This is usually interpreted to exclude notes as to who said what to whom. It may, therefore, be necessary to make special provisions for the recording of oral evidence where the circumstances warrant.

Procedure By-Laws

Many councils have enacted procedure by-laws to govern their council meetings. Section 32 of The Statutory Powers Procedure Act, 1971, states that, as a general rule, the minimum rules set out in the Act override conflicting procedures contained in a council's procedure by-law.

A council's general procedure by-law will probably not be applicable to hearings

conducted by it; in case of doubt, it is suggested that council consult its legal advisor. In most cases the minimum rules of The Statutory Powers Procedure Act will be sufficient for hearings, but where it is thought advisable to provide additional formal rules, the Statutory Powers Procedure Rules Committee should be contacted at the Ministry of the Attorney General.

SUMMARY

This Act, then, provides a guide or set of procedures to be followed by council when a hearing is to be conducted prior to council exercising a power under a statutory provision that requires a hearing or where the procedural rules of natural justice prescribe one. Every council should familiarize itself with the application of the Act in matters under its jurisdiction.

This bulletin was prepared in the:

Municipal Administration Branch
Ministry of Intergovernmental Affairs
56 Wellesley Street West
Toronto, Ontario
M7A 1Y7 Tel. 416-965-3514

Previous bulletins issued in this series:

- | | | | |
|----|---|----|---|
| 1 | Highlights of the Municipal Elections Act, 1977 | 15 | An Act to Amend the Municipal Act (Bill 80) Remuneration and Expenses |
| 2 | Conflict of Interest in Municipal Government | 16 | Municipal Staff Reports |
| 3 | Amendments to The Municipal Elections Act, 1977 | 17 | Council Committees |
| 4 | Council Agenda and Minutes -- Committee Agenda and Reports | 18 | Liability Protection |
| 5 | An Alphabetical Filing System Suitable for a Small Municipality | 19 | Summary of 1978 Legislation Respecting Remuneration and Expenses |
| 6 | Bargaining Information | 20 | Microrecording |
| 7 | Drafting Municipal By-laws | 21 | Holidays and Time Calculations |
| 8 | Municipal Insurance | 22 | Minicomputers |
| 9 | The Municipality and the Law | 23 | Training Opportunities For Staff in Small Municipalities |
| 10 | Labour Relations -- The Organizing Process | 24 | Animal Control |
| 11 | Procedure By-law | 25 | Purchasing in Small Municipalities |
| 12 | Dismissal | 26 | Recruiting - I. Planning the Process |
| 13 | Labour Relations -- Components of a Collective Agreement | 27 | Recruiting - II. The Right Person for the Job |
| 14 | The Head of Council | 28 | Recruiting - III. Advertising |
| | | 29 | Recruiting - IV. The Interview |
| | | 30 | The Interpretation Act (Being Printed) |

Copies of all the bulletins in this series are available at \$0.50 each, prepaid, from:

Publications Centre
880 Bay Street, 5th Floor
Toronto, Ontario
M7A 1N8

(Please make cheques payable to the Treasurer of Ontario)

A series of Financial Procedures Bulletins is being issued by the Municipal Budgets and Accounts Branch. Copies are available at \$1.00 each from the Publications Centre. Titles now available are:

- F.1 Cash Management in Municipalities
- F.2 Bank Reconciliation Procedures for Municipalities
- F.3 Municipal Investments
- F.4 Zero-Base Budgeting
- F.5 Reserves, Reserve Funds, Allowances and Other Special Funds. July 1979, 30 pp.

Prices subject to change without notice.

For additional information on this subject, get in touch with any of the field officers of the Local Government Division. They are located at these addresses:

BRANTFORD

172 Dalhousie St.
Brantford, Ontario
N3T 2J7
(519) 756-0360

ORILLIA

15B Matchedash St. N.
Orillia, Ontario
L3V 4T4
(705) 325-6144

GUELPH

30 Edinburgh Road N.
Guelph, Ontario
N1H 7J1
(519) 836-2531

OSHAWA

74 Simcoe St. S.
P.O. Box 2216
Oshawa, Ontario
L1H 7V5
(416) 571-1515

KINGSTON

1055 Princess St.
Kingston, Ontario
K7L 5T3
(613) 546-5565

OTTAWA

244 Rideau St.
Ottawa, Ontario
K1N 5Y3
(613) 232-9446

LONDON

495 Richmond St.
London, Ontario
N6A 5A9
(519) 438-7255

SUDBURY

1349 LaSalle Blvd.
Sudbury, Ontario
P3A 1Z2
(705) 566-0901

NORTH BAY

347 Sherbrooke St.
North Bay, Ontario
P1B 2C1
(705) 476-4300

THUNDER BAY

435 James St. S.
P.O. Box 5000
Thunder Bay, Ontario
P7C 5G6
(807) 475-1621

